REPORTABLE

IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 253/2007

Date of Decision: February 1, 2007

GHANSHYAM ..... Petitioner

Through Mr.B.K.Saini, Advocate.

versus

DELHI METRO RAIL CROPRATION & ..... Respondent

Through Mr.A.Y.Chitale, Ms. Suchitra A.Chitale, Ms. Sujeeta Srivastava and Mr.Dhruv Madan, Advocate for respondent-DMRC.
Mr. Ramesh Kumar Sharma, Advocate for respondent No.4.

CORAM:

HON'BLE MS. JUSTICE REKHA SHARMA

1. Whether Reporters of the Local Papers may be allowed to see the judgment? Yes

2. To be referred to the Reporter or not? Yes

3. Whether the judgment should be reported in the Digest? Yes

REKHA SHARMA, J.

Ghanshyam an employee of Delhi Metro Rail Corporation is aggrieved by the non-acceptance of his resignation from the service by the said organization, non-sanction of his leave for his absence on

24.9.2006, 25.9.2006, 29.9.2006 and 10.11.2006 to 5.12.2006 and non-release of his salary for the period 1.10.2006 onwards. Hence, this writ petition.

The petitioner - Ghanshyam joined the Delhi Metro Rail Corporation(DMRC) as DSL Mechanic on 28.2.2004. His offer of appointment dated 26.2.2004 contains the terms and conditions of his employment of which clauses 8 & 9 are relevant for the present purpose. They are as under:-

> 8. The minimum Notice period of "three months is required for preferring resignation by employee. However, the Management reserves the right not to accept your resignation if the circumstances so warrant, such as pending/anticipated disciplinary proceedings, exigencies of work or for any other reasons as considered appropriate by the Management.
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> 9. You will by required to execute a bond for Rs.40,000/- (Rupees forty thousand only) to serve this Corporation for a minimum period of 3 years (inclusive of the probation period) from the date of joining the services. The condition of 3 years' service is without prejudice to probation period. The power to terminate your services will vest with the Management under whose authority your services are placed.

It is the case of the petitioner that he found his job arduous in nature and, therefore, he tendered his resignation on 15.9.2006 with a request that he may be released from service as early as possible by waving the condition of three months notice as contained in clause 8 of the terms of his appointment. By a

subsequent letter dated 19.9.2006, he requested that he may be released w.e.f. 1.11.2006. The DMRC responded to the letter of resignation on 15.12.2006 by which date the requirement of three months' notice stood met yet it declined to accept his resignation. It took the stand that the petitioner after submitting the resignation had not performed his duty and had remained absent w.e.f. 10.11.2006 onwards and also remained on unauthorized leave on 29.9.2006, 24.9.2006 to 25.9.2006, 3.10.2006 and 16.10.2006. Because of his alleged absence from duty on the said dates it was communicated to him that he had not fulfilled the condition of minimum three months notice. The DMRC further took the stand that in terms of clause 9 of the offer of appointment he was required to serve the organization for a minimum period of three years and in order to bind him he was suppose to execute a bond for an amount of Rs.40,000/-. Therefore, it was also communicated to him that since he had not served the organization for a period of three years he should deposit Rs.40,000/- in lieu of the bond and Rs.12,020/- towards notice pay in lieu of short period notice through a demand draft in favour of Delhi Metro Rail Corporation so that his case for resignation could be processed accordingly.

The question is whether the stand of the DMRC in not accepting the resignation of the petitioner on the expiry of three

months period w.e.f. 15.12.2006 could be held to be justified.

It is not in dispute that in terms of clause 8 of the appointment letter, the petitioner was required to give three months notice of his intention to resign which he did. The purpose and the object in requiring an employee to give notice of his intention to resign is to put the employer on notice that the employee will not be available to render his services after the expiry of the notice period. Therefore, if the employer so chooses he may, in the meanwhile, make alternative arrangement. There is nothing in clause 8 of the appointment letter which bars an employee from taking leave during the currency of the notice period if otherwise he has leave to his credit and he is entitled to the same. As such, mere tendering of resignation with a notice period of three months cannot take away the rights available to the employee such as leave etc. The reason is that he continues to be in service till the expiry of the notice period. In this view of the matter the stand of the DMRC that the petitioners resignation letter fell short of three months notice because during that period he took leave cannot be accepted.

It is also the case of the DMRC that the petitioner was unauthorizedly absent on the dates mentioned above. The explanation of the petitioner is that he had applied for casual leave for 24.9.2006, 25.9.2006 and for restricted holiday on 29.9.2006. Regarding his

absence from 10.11.2006 to 5.12.2006 his case is that he was not well and had submitted his medical certificate from G.T.B.Hospital. According to the petitioner, his applications for leave are pending consideration with DMRC and he has not heard anything about the fate of the same. The DMRC also has not produced before me any communication to show that the applications of the petitioner for leave have been processed.

As regards the demand of DMRC from the petitioner to deposit a sum of Rs.40,000/- for not serving the organization for a period of three years, the case of the petitioner is that he did not fill up any bond as per clause 9 of the appointment letter and as such the said clause cannot be enforced against him. The DMRC has not produced any bond executed by the petitioner in terms of clause 9.

A glance at clause 9 indicates that the demand for a sum of Rs.40,000/- can be made only if an employee has executed a bond. Since, as per the petitioner, no bond was executed by him and as none was produced before me, it is assumed that the condition of service as laid down in clause 9 was waived in his case. The DMRC has also made a demand of Rs.12,020/- from the employee towards notice pay in lieu of short period notice. As it has been held by me that there was no bar in the petitioner taking leave during the currency of the notice period there is no question of any short period notice.

In view of what has been noticed above, I hold, that the resignation letter of the petitioner dated 15.9.2006 was in order. It ought to have been accepted on the expiry of three months notice. This having not been done, the same is deemed to have been accepted. The petitioner shall be taken to have been relieved from service w.e.f. 15.12.2006. As regards the absence of the petitioner on the dates mentioned above, the DMRC is directed to pass an order on his leave applications and if he is found to be unauthorizedly absent from duties, his salary for the said dates may be deducted. If any amount is due to him towards salary from the month of October onwards that should be released to him within one month from the date of this order. The writ petition stands disposed of.

REKHA SHARMA, J

FEBRUARY 1, 2007
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